

107TH CONGRESS
1ST SESSION

S. 1704

To amend the Clayton Act to make the antitrust laws applicable to the elimination or relocation of major league baseball franchises.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2001

Mr. WELLSTONE (for himself, Mr. DAYTON, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act to make the antitrust laws applicable to the elimination or relocation of major league baseball franchises.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Antitrust
5 in National Sports (FANS) Act of 2001”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to state that the elimi-
8 nation or relocation of major league baseball franchises
9 are covered under the antitrust laws, and to make clear

1 that the enactment of this Act does not change the appli-
 2 cation of the antitrust laws in any other context or with
 3 respect to any other person or entity.

4 **SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO PRO-**
 5 **FESSIONAL MAJOR LEAGUE BASEBALL.**

6 The Clayton Act (15 U.S.C. Sec. 12 et seq.) is
 7 amended—

8 (1) by redesignating section 27, as added by the
 9 Curt Flood Act of 1998 (Public Law 105–297), as
 10 section 28, and

11 (2) by adding at the end the following:

12 “SEC. 29. (a) Subject to subsections (b) through (d),
 13 the conduct, acts, practices, or agreements of persons in
 14 the business of organized professional major league base-
 15 ball directly relating to or affecting the elimination or relo-
 16 cation of a major league baseball franchise are subject to
 17 the antitrust laws to the same extent such conduct, acts,
 18 practices, or agreements would be subject to the antitrust
 19 laws if engaged in by persons in any other professional
 20 sports business affecting interstate commerce.

21 “(b) No court shall rely on the enactment of this sec-
 22 tion as a basis for changing the application of the anti-
 23 trust laws to any conduct, acts, practices, or agreements
 24 other than those set forth in subsection (a). This section
 25 does not create, permit, or imply a cause of action by

1 which to challenge under the antitrust laws, or otherwise
2 apply the antitrust laws to, any conduct, acts, practices,
3 or agreements that do not directly relate to or affect the
4 elimination or relocation of a major league baseball fran-
5 chise, including but not limited to—

6 “(1) the agreement between organized profes-
7 sional major league baseball teams and the teams of
8 the National Association of Professional Baseball
9 Leagues, commonly known as the ‘Professional
10 Baseball Agreement’, the relationship between orga-
11 nized professional major league baseball and orga-
12 nized professional minor league baseball, or any
13 other matter relating to organized professional base-
14 ball’s minor leagues;

15 “(2) any conduct, act, practice, or agreement of
16 a person engaging in, conducting, or participating in
17 the business of organized professional baseball relat-
18 ing to or affecting the relationship between the Of-
19 fice of the Commissioner and franchise owners, the
20 marketing or sales of the entertainment product of
21 organized professional baseball, and the licensing of
22 intellectual property rights owned or held by orga-
23 nized professional baseball teams individually or col-
24 lectively;

1 “(3) any conduct, act, practice, or agreement
2 protected by Public Law 87–331 (15 U.S.C. Sec.
3 1291 et seq.) (commonly known as the ‘Sports
4 Broadcasting Act of 1961’); and

5 “(4) any conduct, act, practice, or agreement of
6 a person not in the business of organized profes-
7 sional major league baseball.

8 “(c) Any person (including any major league or minor
9 league baseball player, any Federal, State, or local govern-
10 ment, and any stadium authority) injured by a violation
11 of subsection (a), shall have standing to bring action
12 under such subsection based on such violation.

13 “(d)(1) As used in this section—

14 “(A) the term ‘person’ means any entity, in-
15 cluding an individual, partnership, corporation,
16 trust, or unincorporated association, or any com-
17 bination or association thereof, and

18 “(B) the National Association of Professional
19 Baseball Leagues, its member leagues, and the clubs
20 of any of such leagues, shall not be considered to be
21 ‘in the business of organized professional major
22 league baseball’.

1 “(2) The scope of the conduct, acts, practices, or
2 agreements covered by subsection (b) shall not be strictly
3 or narrowly construed.”.

